



Department of Justice

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Southern District of Ohio

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**BERKELEY PREMIUM NUTRACEUTICALS, SIX INDIVIDUALS INDICTED FOR
FRAUDULENT BUSINESS PRACTICES IN CONNECTION WITH SALES OF
DIETARY SUPPLEMENTS**

112-count indictment alleges \$100 million loss caused by fraud scheme

CINCINNATI - A federal grand jury here has indicted Cincinnati-based Berkeley Premium Nutraceuticals and six individuals connected with the company, alleging that Berkeley and the individuals made millions of dollars over a five-year period through a fraud scheme that sent thousands of customers dietary supplements they did not order, charged customers' credit cards without authorization, misrepresented their business activities to their customers and the merchant banks they worked with, and laundered the money through personal bank and investment accounts.

The indictment alleges that the loss to victims is at least \$100,000,000.

Gregory G. Lockhart, United States Attorney for the Southern District of Ohio; Gerald A. O'Farrell, Assistant Inspector in Charge, United States Postal Inspection Service; Timothy P. Murphy, Special Agent in Charge, Federal Bureau of Investigation, Cincinnati Field Division; Cromwell A. Handy, Special Agent in Charge, Internal Revenue Service Criminal Investigation, and Kim Rice, Special Agent in Charge, U.S. Food and Drug Administration Office of Criminal Investigations (FDA) announced the indictment returned yesterday. Lockhart also acknowledged the involvement of the Federal Trade Commission in uncovering Berkeley's business practices.

The indictment charges these individuals:

STEVEN E. WARSHAK, age 40, president and owner of Berkeley, is named in 107 counts.

HARRIET WARSHAK, age 72, of West Chester, the mother of Steven E. Warshak, has served in various roles with Berkeley including Director of Data Entry and Director of the Credit

Department. She has also worked in the warehouse and held various other duties. She is named in nine counts.

PAUL J. KELLOGG, age 39, of West Chester, is named in nine counts. Kellogg is Berkeley's in-house attorney.

CHARLES W. "CHIP" CLARKE, JR., age 51, of Lakeside Park, Kentucky, held several roles at Berkeley including being in charge of wholesale and the men's division, as well as participating in the marketing of Berkeley products. Clarke is charged with one count of conspiracy.

STEVEN P. PUGH, age 36, of West Chester, worked primarily in the warehouse as a manager at Berkeley. He is charged with conspiracy to misbrand, misbranding and interfering with the FDA.

AMAR D. CHAVAN, age 29, of Cincinnati, was Berkeley's Chief Information Officer. He is charged with two counts of conspiracy.

The indictment also charges TCI Media, Inc, another company owned by Steven Warshak, with 21 counts of money laundering, and Berkeley Premium Nutraceuticals, with a total of 15 counts.

The indictment alleges that Berkeley, Steven Warshak, Harriet Warshak, Clarke and Chavan conspired beginning in 2001 to commit mail, wire and bank fraud.

The alleged scheme involved false advertising which contained representations about money-back guarantees that the company as a matter of practice would not honor. As part of the scheme, the conspirators placed many consumers who responded to free-trial solicitations on an automatic shipment program without the customer's authorization, knowledge, or consent. Berkeley would then send the product to the consumer and bill the consumer's credit card regularly. The program accounted for 60 – 80% of Berkeley's weekly revenue. When customers called to cancel, the conspirators employed various means to delay or hinder any returns or cancellations from occurring.

The indictment also alleges that the company gave customers who complained the name of a fictitious director of customer care, "Michael Johnson", and instructed the customers to write to him.

The indictment alleges that the conspirators used several tactics, including splitting sales into multiple charges, as a way to falsely inflate the number of sales transactions and reduce the company's ratio of "chargebacks" from disputed credit card charges. This allowed Berkeley to stay within the maximum chargeback percentage allowed by its merchant bank accounts and to continue the unauthorized charging of consumers' credit cards.

"The victims include thousands of consumers who purchased or agreed to a free trial of Berkeley's various products based upon false representations and promises, and whose credit cards were charged by Berkeley for products shipped to them without their authorization, knowledge, or consent," Lockhart said. "The victims also included various merchant banks who handled customer payments for Berkeley."

The indictment contains 12 counts of mail fraud against Steven Warshak and Berkeley stemming from the shipment of products to customers who did not order them and letters sent to customers from "Mr. Johnson," the fictitious Director of Customer Care.

"The mission of the U.S. Postal Inspection Service includes protecting the nation's mail system from criminal misuse and ensuring the American public's continued confidence in the mail," O'Farrell said. "The fraudulent business practices outlined in the indictment details the United States mail as being an integral part of the scheme. Our message to the American public is simple; we will protect you from criminal and fraudulent activities that involve the U.S. Mail."

The indictment contains four counts of bank fraud and 12 counts of making false statements to banks in connection with Berkeley's use of merchant bank accounts.

"The FBI believes that fraudulent business practices, such as those alleged in the indictment, threaten the very nature of the free enterprise system in the United States," Special Agent in Charge Murphy said. "Individuals who engage in such practices to enrich themselves at the expense of American consumers must recognize that their conduct will draw the full investigative efforts of the U.S. government."

The indictment contains 77 counts of money laundering alleging that the defendants moved millions of dollars through multiple accounts to conceal the source of the money acquired through fraud.

“Money laundering is not a victimless crime,” IRS Special Agent in Charge Handy said. “Not only are innocent people duped by various schemes, but the underground, untaxed economy harms the entire nation’s economic strength. In essence, money laundering is tax evasion in progress.”

The indictment also charges Steven Warshak, Kellogg and Pugh with three counts related to re-labeling one of the company’s 13 core products. In 2003, they marketed Rovicid as a prostate health product for men which could enhance sexual performance and help reduce susceptibility to certain kinds of cancer. In February 2004, the three allegedly took the Rovicid out of its original boxes and placed it in new boxes labeling it as a heart-healthy dietary supplement for both men and women. Prior to a May 14, 2004 inspection by the FDA, the “old” Rovicid was loaded onto a rental truck and parked at another company location to hide it from the inspectors. After the inspection, the mislabeled supplement was placed back in the warehouse for continued sale to customers.

“The intentional mislabeling of supplements is not only fraudulent but presents a potential public safety threat,” FDA Special Agent in Charge Rice said. “The FDA will aggressively pursue those who deliberately circumvent the laws in place to protect the consuming public.”

Warshak and Kellogg are also charged with conspiring to transfer company money into a fraudulent trust fund in order to keep the assets hidden from the Federal Trade Commission which was conducting an investigation in 2004 into fraudulent business practices. In January 2006, the FTC filed a complaint against Warshak, Berkeley, and several related companies.

The indictment contains a forfeiture allegation in which, if the defendants are convicted of crimes alleged, they could face a monetary judgment of \$100,000,000, representing the amount of loss caused by the fraud, as well as forfeiture of six pieces of real estate, two vehicles,

Berkeley indictment

the contents of 23 bank and investment accounts, contents of an insurance policy, and any other proceeds from the criminal acts.

The defendants' initial court appearance on the charges is scheduled for Thursday, September 28, 2006 at 1:30 p.m. before U.S. Magistrate Judge Timothy S. Hogan.

The attached chart describes the specific crimes charged in the indictment and the statutory penalties for each. Actual sentences are determined by the judge presiding over the case.

Lockhart commended the cooperative investigation by inspectors and agents from the U.S. Postal Inspection Service, FBI, IRS, and FDA, as well as Assistant U.S. Attorney Anne L. Porter who is prosecuting the case and Assistant U.S. Attorney Nettie Wiethe who is handling the forfeiture aspects of the case.

Anyone who believes they are a victim of the alleged criminal actions by Berkeley and wishes to receive information regarding case updates or to submit a victim impact statement can refer to the U.S. Attorney's Website, www.usdoj.gov/usao/ohs, and click on the community tab, followed by the victim witness tab. Then click on case update to view the most recent updates.

An indictment is merely an accusation. The burden of proof is on the government to show in a court of law that the defendants named in the indictment actually committed the crimes.

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